IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRL.A.No. 458 of 2003()

CC.462/1999 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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APPELLANT: COMPLAINANT:

PIOUS JOHN,
ANCHUTHARA HOUSE, PANAVALLI, CHERTHALA.

BY ADV. SRI.TOMY SEBASTIAN

RESPONDENTS: ACCUSED & STATE:

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1. V.R.PADMANABHAN NAIR,
CHERUKATTIL HOUSE, PANAVALLI P.O., CHERTHALA.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY ADV. SRI.M.SASINDRAN-R1
PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN-R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 458 OF 2003

Dated this the 14th day of August, 2007

JUDGMENT

This appeal is filed against the judgment in C.C. No. 462 of 1999 on the file of the Judicial First Class Magistrate's Court II, Cherthala.

2. The case of the appellant - complainant was that the first respondent - accused borrowed from him an amount of Rs.20,000/- on 1.7.1997 and issued Ext.P1 cheque towards discharge of the said liability and that when the cheque was presented to the bank for encashment, the same was dishonoured for want of sufficient fund in the account of the first respondent. When the amount covered by the cheque was not repaid by the first respondent even after the appellant had complied with the statutory provisions regarding notice etc., he filed the complaint against the first respondent alleging offence punishable under Section 138 of the Negotiable Instruments Act, 1881. To prove the case against the first respondent - accused, the appellant - complainant and the Branch Manager of the bank were examined as PWs.1 and 2 respectively and Exts.P1 to P8

were produced. On the side of the defence, DWs.1 to 3 were examined and Exts.D1 to D5 were produced. After closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the transaction alleged in the complaint, the accused stated that the cheque in question was not issued in discharge of any legally enforceable debt and that the said cheque was given to the appellant as security while bidding a chitty conducted by the appellant. After considering the entire case, the trial court found that the appellant - complainant failed to prove that the cheque in question was issued by the accused in discharge of any legally enforceable debt and that the same was issued as security for the chitty amount bid by the accused. Holding so, the trial court acquitted the first respondent - accused.

3. Heard the learned counsel appearing for the appellant and perused the records made available before this Court. Though the specific case of the appellant was that the first respondent had borrowed Rs.20,000/- from him and had issued Ext.P1 cheque in discharge of the said amount, the trial court found that the case set up by the first respondent - accused was more probable. The trial court also accepted the evidence of DWs.1 to 3. After considering the arguments of the learned counsel appearing for the appellant and the entire evidence, this Court is

of the view that the finding of the trial court that the appellant failed to prove the case against first respondent requires no interference.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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